COMSAT CORPORATION

EX PARTE OR LATE FILED

Howard D. Polsky, Esq.
Vice President
Federal Policy and Regulation

6560 Rock Spring Drive
Bethesda, MD 20817
Telephone 301 214 3461
Fax 301 214 7185

April 22, 1999

RECEIVED
APR 22 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

98-192

Re: Ex Parte
Direct Access to the INTELSAT System
IB Docket No. 98-122; File No. 60-SAT-ISP-92

Dear Ms. Salas:

On April 21, 1999, Mr. Howard D. Polsky, Vice President, Federal Policy and Regulation; Ms. Beverly W. Andrews, Director, International Regulatory Affairs & Trade; and Mr. Theodore W. Boll, Director, Financial Analysis & Planning, all of COMSAT Corporation (COMSAT), met with Mr. James L. Ball, Deputy Chief; Mr. Douglas Webbink, Chief Economist; Mr. Sandeep Taxali, Policy Advisor; and Ms. Cathy Hsu, Telecommunications Specialist, of the FCC International Bureau, to review financial data submitted by COMSAT in the above-captioned proceeding. A discussion was held about the costs COMSAT incurs as the U.S. Signatory to INTELSAT, and the level of a return that would be compensatory for COMSAT's investment in the INTELSAT system under a Level 3 direct access regime.

As COMSAT informed the IB staff, it is also submitting herewith for inclusion in the record of this proceeding a copy of the Administration's views on direct access to INTELSAT, which are relevant to the Commission's public interest analysis. S.376, the pending Senate bill which is the object of the Administration's Statement of Position, would prohibit INTELSAT from directly accessing the U.S. market at the retail level until it is privatized in a pro-competitive manner.

The Administration has recognized that the implementation of direct access in some 90+ other countries is different than the U.S. situation, where direct access would have only temporary and modest benefits -- if "properly implemented". Proper implementation, according to the Administration, consists of two elements.

No. of Copies rec'd 0+1
List A B C D E

First, "it should not involve a policy of 'fresh look'." Second, COMSAT "should be reimbursed for its true costs of providing INTELSAT services." Here, the Administration stated that if COMSAT's customers were allowed to pay only the IUC, as some parties in this proceeding have proposed, then "the implicit subsidy from COMSAT to these customers would distort competition."

Finally, the Administration observed that "benefits to U.S. users from direct access will be limited because INTELSAT privatization is in sight Once INTELSAT becomes a private provider, any user should be able to access it directly, and the issue will be moot."

Two copies of the Notice are being submitted herewith and submitted to the Secretary of the Federal Communications Commission in accordance with Section 1,1206(a)(1) of the Commission's rules.

Please date stamp the attached duplicate upon receipt and return it via the messenger for our records. If any questions arise concerning this matter, kindly contact the undersigned.

Sincerely,

Howard D. Polsky

cc. J. Ball, Deputy Chief, IB
R. Porter, Acting Chief, IB
All FCC Commissioners

Statement of Administration Position
Ambassador Vonya B. McCann
United States Coordinator
International Communications and Information Policy
before the
Subcommittee on Communications
Senate Committee on Commerce, Science and Transportation
March 25, 1999

Thank you for the opportunity to present the Administration's views on the privatization of INTELSAT and on your proposed legislation, S. 376, the "Open-market Reorganization for the Betterment of International Telecommunications Act." The international satellite services industry is increasingly important. Privatization and de-monopolization of national telecom operators around the world, combined with the Administration's successful conclusion in 1997 of the WTO agreement on basic telecommunications services, mean that new markets are opening up at an unprecedented rate. And because of recent strides in technology, satellites now offer cost-effective global links for direct-to-home digital TV, advanced data services, Internet access and hand-held wireless phones usable anywhere in the world, in addition to traditional telephone calls and television feeds. Privatization of INTELSAT, properly carried out, will contribute significantly to the dynamism of this exciting industry, benefiting satellite services users, providers and investors in the United States and throughout the world.

The Administration, in partnership with the Congress, has worked tirelessly for more than five years to bring about the restructuring and privatization of the intergovernmental satellite organizations (ISOs), INTELSAT and Inmarsat. These efforts have borne fruit. Four years ago, Inmarsat's members spun off a significant portion of its growth business into a commercial stock corporation, ICO Global Communications Ltd., in which Hughes and TRW (as well as Comsat) have substantial investments. In March 1998, INTELSAT's member governments agreed to spin off growth business segments of that organization into a new company, New Skies Satellites, N.V., with plans for public trading of shares by the end of 1999. Like ICO, New Skies has no intergovernmental status nor any privileges and immunities, and it is subject to the laws of the jurisdictions in which it will do business, including the United States. The Administration negotiated competition-safeguard provisions as part of these multilateral actions. These two spinoffs were important first steps in the ongoing transition of Inmarsat and INTELSAT to commercial status. Significantly, they have demonstrated to the member countries, especially those reluctant to undertake these steps, that private entities in an open market will compete to meet their telecommunications needs.

As a result, full privatization of the ISOs is now in sight. Next month, Inmarsat will complete the privatization of its remaining business operations. INTELSAT's Director General has stated unequivocally his commitment to achieve privatization by 2001, and discussions within the INTELSAT Board of Governors on privatization are progressing

favorably. The United States will continue to play a leadership role within the international community, to get a pro-competitive transition plan and an aggressive timetable for full privatization of INTELSAT.

At this time, the Administration does not believe any legislation is necessary to ensure that the privatization of INTELSAT and Inmarsat does not harm competition in the U.S. market (although legislation is necessary for other purposes, as discussed below). The Federal Communications Commission (FCC) and the Antitrust Division of the Department of Justice have ample authority to protect U.S. interests, and the Administration has been aggressive in ensuring that plans to restructure and privatize the ISOs are pro-competitive.

To elaborate, prior to supporting the ISO decisions to create New Skies and to privatize Inmarsat, the Administration conducted a rigorous process to ensure that competition would be helped, not harmed, by these changes. This process included: extensive outreach to U.S. industry to identify issues of concern; substantive review of restructuring/privatization plans and documents by authorities from the FCC and the Antitrust Division, among other agencies; and lengthy negotiations with the ISO member governments and competition authorities from the European Union and Canada to establish the appropriate competition safeguards. Our competition authorities were satisfied that the final restructuring/privatization plans represented an improvement over the status quo in terms of competition. Had they not been, the United States would have "disassociated" from the ISO decisions and taken the necessary steps to block access to our market. Moreover, the FCC retains the authority to block such access if these plans are implemented in a way that it believes would harm U.S. competition.

In sum, the Administration has made clear its commitment to ensure that INTELSAT and Inmarsat privatizations do not harm U.S. competition, and our competition authorities have ample opportunity under existing law to do that. Nevertheless, we recognize that Congress was instrumental in establishing INTELSAT and Inmarsat and that it may want to address ISO privatization in legislation. If so, the Administration believes that such legislation should reflect three key principles:

First, Congress should be careful not to limit access by INTELSAT to the U.S. market in a way that harms American consumers -- particularly in the fast-growing areas of high-speed data transmission, Internet access and video. Thus, legislation should avoid requiring INTELSAT to meet a fixed deadline or conditions for privatization that are infeasible or unrealistic. Two key attributes of the international satellite services industry make INTELSAT access to our market a major concern. First, the industry is dominated by a small number of relatively large providers -- one of them INTELSAT -- and the industry is likely to remain concentrated, because fixed costs are very high and there are significant economies of scale. Thus, restrictions on INTELSAT's access to the U.S. market could significantly reduce competition. Second, U.S. consumers account for nearly half of all consumption of global satellite services, and consumption is forecast to nearly triple in the next few years. Thus, U.S. consumers would be hurt disproportionately by restrictions on INTELSAT or any other major services provider.

Principle two is that privatization must create a level playing field between INTELSAT and its commercial competitors, both U.S. and foreign. This means that the privatized INTELSAT should:

- be located in a jurisdiction with effective competition laws and regulatory oversight and that has made open-market satellite commitments under the WTO agreement on basic telecommunications;

- not retain any privilege, immunity or other regulatory advantage resulting from its former intergovernmental status or that is not readily or meaningfully available to other satellite competitors;

- compete free of relationships of ownership or control with former signatories that confer a competitive advantage in providing new services or that provide an incentive for any purchaser of the privatized INTELSAT's services to discriminate anti-competitively in its favor;

- move rapidly toward public trading of shares on internationally traded stock exchanges; and

- obtain no unfair advantage from "warehoused" orbital slots obtained during its operation as an intergovernmental organization.

The third principle is that any legislation must be consistent with the United States' international obligations, including the Fourth Protocol to the World Trade Organization General Agreement on Trade in Services (the WTO basic telecommunications services agreement). In addition to raising possible WTO questions, legislation that is seen as a means of favoring U.S. satellite services firms may provoke retaliation from U.S. trading partners and undermine U.S. efforts to accelerate the privatization of INTELSAT. At present, the FCC, in consultation with the Executive Branch, has the flexibility to issue or condition a license in a manner that is consistent with U.S. international obligations; that flexibility should be retained.

S. 376

The Administration strongly supports the objective of S. 376 to promote competition in domestic and international satellite communications services by encouraging the full privatization of INTELSAT and reforming the framework for regulating Comsat. Moreover, we are pleased that the bill includes provisions to allow the United States to maintain membership in the residual Inmarsat intergovernmental organization following privatization of Inmarsat's business operations next month. The Administration requested these provisions to protect the interests of U.S. maritime users, particularly the Coast Guard, in the residual

intergovernmental organization, which will oversee the global maritime distress and safety system. Finally, without expressing any view on the proposed acquisition of Comsat by Lockheed Martin, which the Justice Department is still reviewing, we believe the provision to lift the cap on individual ownership of Comsat is desirable. The cap was put in place to ensure Comsat's independence, particularly from the U.S. long-distance and international telecom monopolies, at a time when the nascent satellite services industry was itself considered a natural monopoly. However, the U.S. no longer has long-distance and international telecom monopolies, and the satellite services industry now has competition as well.

Although we believe S. 376 is a very positive contribution to the debate over ISO privatization, we would like to see several provisions in S. 376 modified or eliminated, in keeping with the three principles described above:

- Sec. 603 (b) prohibits the FCC from authorizing INTELSAT to provide certain services (DTH, DBS, DAR and Ka-Band) in the U.S. market prior to privatization. This section should be eliminated. INTELSAT is unlikely to offer any of these services in the U.S. prior to privatization; hence this section would have little practical effect. Nevertheless, in principle, we oppose inflexible statutory service restrictions, because they would limit competition and resulting choices for U.S. consumers, as discussed above.

- Sec. 613 requires the President, following the decision by INTELSAT's members to privatize, to certify that the privatization is pro-competitive and will not distort competition in the U.S. market. This provision is unnecessary. As noted above, the Administration will follow a rigorous review process to ensure that INTELSAT's privatization plan is pro-competitive before the United States agrees to support it within INTELSAT, and the FCC and Justice's Antitrust Division have ample opportunity to review the implementation of this plan. At a minimum, the provision should be modified so as to require that the certification process take place prior to INTELSAT's transition to a private structure.

- Sec. 614 requires that the FCC be bound by the President's certification under Sec. 613. This section should be modified to clarify that it would in no way reduce existing FCC authority.

- Since INTELSAT's beginning, Comsat has served in the congressionally chartered role of U.S. Signatory, subject to the "instructional authority" of the U.S. Government. The bill should explicitly continue this authority for as long as INTELSAT remains an intergovernmental organization and Comsat remains the U.S. Signatory.

Direct Access. Sec. 603 (a) effectively would prohibit direct access to INTELSAT by its U.S. customers. Although direct access is a highly controversial issue in the debate over INTELSAT privatization, the rhetoric on both sides may well be inflated. Direct access to

INTELSAT, broadly speaking, is a pro-competitive policy that has been implemented in 90+ countries to the benefit of consumers. However, direct access in this country, at this time, probably will produce only modest benefits for U.S. consumers of satellite services. But if the benefits will not be significant, neither will the harm to Comsat, at least if direct access is properly implemented. Two possible effects of direct access -- on competition and resulting economic efficiency and on the privatization process -- merit discussion.

Direct access to INTELSAT, properly implemented, probably would yield only modest benefits to U.S. users through greater competition and efficiency. First, unlike most INTELSAT signatories at the time that direct access was adopted in their home markets, Comsat is not a vertically integrated telecom monopoly. To elaborate, many foreign countries adopted direct access as part of structural reforms to reduce the power of monopoly telecom providers that were also signatories to INTELSAT. But because Comsat's sole function is to sell INTELSAT space segment, the ability to bypass Comsat through direct access is far less significant. Second, benefits to U.S. users from direct access will be limited because INTELSAT privatization is in sight. Once INTELSAT becomes a private provider, any user should be able to access it directly, and the issue will be moot.

"Proper implementation" of direct access refers to two things. First, it should not include a policy of "fresh look," which would allow Comsat customers to renegotiate their contracts. The contracts were negotiated by private parties in an environment that offered some competitive alternatives. Moreover, Comsat has made long-term commitments to INTELSAT based on the contracts. It would be inappropriate for the federal government to overturn such contracts.

Second, Comsat should be reimbursed for its true costs of providing INTELSAT services. Although the INTELSAT utilization charge (IUC) is often thought to be the wholesale cost of providing INTELSAT services, it is actually an internal accounting convention that excludes some of Comsat's legitimate costs. If Comsat customers and direct access users (some of whom compete with Comsat) paid only the IUC under a direct access regime, the implicit subsidy from Comsat to these customers/direct access users would distort competition.

In addition to competition/efficiency effects, a second broad consideration is the effect of direct access on INTELSAT privatization. Parts of the executive branch have in the past expressed concern that allowing direct access would remove a significant incentive for certain signatories to support privatization, because they could bypass Comsat and deal directly with U.S. customers without first privatizing. And, in fact, several signatories have expressed the view that if they got direct access to the U.S. market, privatization might be less urgent. However, the momentum for privatization is growing and the potential savings to users from bypassing Comsat are modest, as noted above. Thus we believe the overall risk to privatization is small.